IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

TRUST PETITION NO.1 OF 2001

Ravindra Narottamdas Merchant ....Plffs.
vs.
Niranjani Narottamdas Merchant and Anr.....Resp
AND
Veena Manik Singhee and Ors. .....Defnds

CHAMBER SUMMONS NO. 1342 OF 2003

Ravindra Narottamdas Merchant ....Plffs.
vs.
Niranjani Narottamdas Merchant and Anr.....Resp

NOTICE OF MOTION NO. 1198 OF 2003
IN
TRUST PETITION NO. 1 OF 2001

Ravindra Narottamdas Merchant ....Plffs.
vs.
Niranjani Narottamdas Merchant and Anr.....Resp

NOTICE OF MOTION NO. 3707 OF 2003
IN
TRUST PETITION NO. 1 OF 2001

Ravindra Narottamdas Merchant ....Plffs.
vs.
Niranjani Narottamdas Merchant and Anr.....Resp
AND
Dinesh G. Shah and Ors. ...Addl.Respondents

NOTICE OF MOTION NO. 693 OF 2004
IN
TRUST PETITION NO. 1 OF 2001

Ravindra Narottamdas Merchant ....Plffs.
vs.
Niranjani Narottamdas Merchant and Anr.....Resp

NOTICE OF MOTION NO. 1902 OF 2005
IN
TRUST PETITION NO. 1 OF 2001

Ravindra Narottamdas Merchant ....Plffs.
vs.
Niranjani Narottamdas Merchant and Anr.....Resp

NOTICE OF MOTION NO. 2411 OF 2003
IN
TRUST PETITION NO. 1 OF 2001

Kiran Narottamdas Merchant ....Applicant
vs.
Niranjani Narottamdas Merchant and Anr.....Resp

U.J. Makhija with S.R. Bhalekar i/b. Little and Co. for the petitioner.

N.P. Deshpande with M.M. Vaidya for respondent no.2.

R.A. Shah with Ms. M. Poladia i/b. M/s. Mansukhalal Hiralal and Co. for respondent no.1.

A L O N G W I T H
SUIT NO. 44 OF 1998

Ravindra Narttamdas Merchant .....Plffs
vs.
Narottamdas Jethabhai
Merchant and Ors. ....Defendants

Ravindra Narottamdas Merchant, plaintiff in person present.

Niranjani Narottamdas Merchant, defendant no.2 and Kiran Narottamdas Merchant defendant no.3 present in person.

B.H. Bhalwal for the applicants and newly added
defendants nos.4, 5 and 6 in Suit No. 44 of 1998.

CORAM: S.U. KAMDAR, J.

DATE : 5TH AUGUST, 2005.

P.C. :

1. By consent of the parties the following order is passed :

2. The arbitration proceedings initiated in a consent order dated 15.2.2000 before the arbitrator, Justice D.R. Dhanuka is terminated U.S. 15(1)(B) of the Arbitration and Conciliation Act, 1996 and the mandate of the arbitrator is brought to an end. In view of the termination of the said mandate the arbitration proceedings will stand terminated u.s.

32(2)(b) and the same will not be proceeded with. The parties have agreed to settle the disputes amongst themselves by the present consent order.

3. It is agreed and declared between the parties that the trust created under the Indenture dated 4.8.1931 by Jethabhai Govindji being the grand father of the petitioner and the second respondent stand dissolved with immediate effect. It has been declared that the petitioner and the second respondent are the sole beneficiaries of all the properties of the said trust. It is agreed and declared that the trust has following properties :

A building known as "RaviKiran" consisting of ground + 8 floors situated at 27, French Road, Dr. Rangnekar Road, Mumbai-7

A building known as "Ravindra Kutir" consisting of ground + 4 floors situated at 29 B French Road, Dr. Rangnekar Road, Mumbai-7

A building where business of "Brij Mandal" consisting of ground + 1 floor situated at 29 Dr. Rangnekar Road, Mumbai-7

A building consisting of Ground + 3 floors having Sai Hotel therein and situated at 29A French Road, Dr. Rangnekar Marg, Mumbai-7

A building being old structure consisting of ground + 3 floors situated at 27F Dr. Rangnekar Marg, Mumbai-7

A godown of about 600 sq. ft situated at 25 French Road, Dr. Rangnekar Road, Mumbai-7.

4. These properties are distributed amongst the beneficiaries as under :

(i) The petitioner will be entitled to a building known as "Ravikiran" of ground plus 8 floors exclusives as a owner thereof subject

to he making payment to the Respondent no.2 of Rs.50,40,000 (Rupees fifty Lakhs and Forty Thousand only). The aforesaid payment shall be made by the petitioner to the respondent no.2 within a period of six months from today. In an event of default or failure to make payment in the aforesaid period the balance outstanding amount inrespect thereof shall be paid with interest at the rate of 12% p.a. However the petitioner undertakes to this court that till and until the aforesaid payment is made to the respondent no.2 he shall not alienate, encumber or create any third party rights inrespect of the building known as 'RaviKiran' which has come to his share except for the purpose of raising the fund payable to the 2nd respondent in the present order. It has been clarified that the petitioner will be entitled to effect transfer of tenancies in respect of the said building except for the seventh and eight floor of the said building. In so far as the seventh and eight floor is concerned the petitioner shall

not alienate, encumber or create any third party rights nor induct any third party in possession thereof till and until the entire payment as stipulated in the present order is paid to the second respondent. However he will be entitled to the raise the fund for the purpose of payment to the 2nd respondent herein even by encumbering the said 7th and 8th Floors alongwith building only.

(ii) The petitioner shall avail the financial loan by creating any mortgage inrespect of the said building for the purpose of making payment to the second respondent only from any banks or financial institution. If such rights are created then such bank or a financial institution shall pay over a cheque for a sum of Rs.50,40,000/- directly to the respondent no.2 herein towards the payment under the present order.

(iii) The respondent no.2 will receive in

his share remaining four structures namely "Ravidrakutir" of ground + 4 structure, having Sai Hotel i.e. situated at 29B french road, Building where ‘Brij Mandal’ is situated i.e. 29 French road and an old structure of ground + 3 floor i.e. 27F french road exclusively as an owner thereof. This will be over and above the payment stipulated in clause-3 hereinabove.

(iv) It is made clear that inrespect of the common space as provided in the map annexed to this order shall remain a common property of both the petitioner and the respondent no.2. and no body will be entitled to utilise, develop or deal with the same save and except by the common user as permissible in law. However the parties will be at liberty to enter into an arrangement with each other if they so desire and deem fit in future.

(v) In so far as the warehouse is concerned the said warehouse which is situated

at 25 French Road will be sold on or before 31.10.2005 and the entire sale proceeds will be deposited with the U.C.O. Bank having its branch at Chowpatty. The said fixed deposit will be in the name of the mother and the petitioner and the second respondent will be the joint nominees in respect of the said fixed deposits. The interest accrued thereon every three months on the said fixed deposits will be paid by the bank directly to the respondent no.1 mother who shall be entitled to utilise the entire amount of interest at her discretion without subject to any accounts. The respondent no.1 shall however not be entitled to encash the original fixed deposits which is issued by the bank nor will be entitled to alienate, encumber or create any third party rights or lien inrespect of the said fixed deposits. The respondent no.1 shall also not entitled to gift, bequeath or change the nominees in respect thereof. The bank is also directed not to permit any lien of any nature whatsoever on the said fixed

deposit receipt in favour of any third party.

(vi) In respect of the said warehouse the Court Receiver, High court, Bombay is appointed as Receiver for a limited purpose of taking possession and effecting sale thereof. The Court Receiver, High Court, Bombay shall sell the said warehouse by public auction and deposit the entire sale proceeds after deductin his costs, charges and expenses with UCO Bank, Choupaty Branch in fixed deposit in the name of the mother being the Respondent no.1 and showiong the petitoner and Respondent no.2 as the joint nominees thereof and the court Receiver will hand over the fixed deposit receipts to the Respondent no.1 and the xerox copies thereof to both the petitioner and the respondent no.2. However, it will be clarified that the petitioner and the respondent no.2 by consent can bring any buyer and if such buyer is brought, the Court Receiver will sell the said property to such

buyer at the parties price agreed by the parties. The sale of the said warehouse will be on as is where is basis.

(vii) In so far as the first floor of the building known as "Ravikiran" is concerned the same will be an exclusive ownership of the respondent no.1 i.e. the mother of the petitioner and respondent no.2. She will be entitled to the first floor premises in its entirety in a building known as Ravi Kiran and she will be entitled to use, occupation and possession thereof as owner and the petitioner shall not have any objection whatsoever to her use, occupation and possession of the said premises. In return the respondent no.1 shall give up all her rights, title and interest if any in the seventh and eight floor of the said building known as "RaviKiran". The respondent no.1 also shall vacate and hand over the possession of the said both 7th and 8th floor of the building to the petitioner herein. The said vacating of the premises of 7th and 8th

Floor of the said building will be simultaneous with she being putting in possession of the first floor premises of the said building. The petitioner shall furnish the said premises reasonably so as to make it habitable for respondent no.1 keeping in mind her needs before she is offered the same for her occupation and possession.

(viii) Both the parties viz. Petitioner and Respondent no.2 agree to execute all necessary documents, vouchers, papers for the purpose of effective transfer of the said properties from the name of the trust to their individual names and also co-operate with each other in getting the names of the parties brought on revenue record inrespect of their respective properties coming to their share. Similarly both the parties agree that they shall co-operate and execute all necessary documents and papers and if necessary appear before the Collector and other authorities for the purpose of effecting sale of the said

warehouse to give complete title to third party purchaser of the same.

(xi) All parties agree that in sof ar as the Lonavala property is concerned being a bungalow situated at Prashanthi Nilayam, 2 Ambawadi Lane, belongs to the 2nd responent and no other party have any claim thereon.

(x) All the parties agree that the assets of the deceased described in Ex.D, E AND F to the affidavit dated 15.9.2003 of the petitioner herein in Chamber Summons No. 1342 of 2003 in Trust Petition No. 1 of 2001 be sold I appoint by consent of the parties, the Court Receiver, High court as receiver in respect of Ex.D. and E which are the shares and fixed deposits. The Court Receiver is empowered to ascertain from the companies the latest position of the shares and transfer and sell the same in open market and recover the price thereof in respect of the said shares set out in Ex.‘D’ to the said affidavit. If

the Court Receiver finds that any shares which were originally standing in the name of the deceased but subsequently transferred by any of the parties then the Court Receiver shall make a report to the court for further directions. In so far as the fixed deposits receipts are concerned under Ex.E to the Chamber Summons the court Receiver is empowered to encash the said fixed deposit which are lying in the Union Bank of India. The Court Receiver is further directed that the said amount which is received from the sale of the shares and encashment of the fixed deposits shall be paid over by the Court Receiver after deduction of the costs, charges and expenses to the newly added three defendants in equal share. These newly added defendants are the sisters of the petitioner and the respondent no.2 and daughters of the respondent no.1. On receipt of the said payment by the said three newly added defendants they shall have no right, title and interest or claim of any nature whatsoever

upon the property of the deceased whether forming part of the trust or otherwise.

(xii) The petitioner state that he has spent Rs.36 lacs towards the maintenance of the trust properties. I appoint Court Commissioner to take accounts inrespect of the said expenses incurred by the petitioner. The petitioner will produce all necessary vouchers, documents etc to justify his claim. The respondent no.2 will be heard by the commissioner and will be entitled to raise all objections to the same. After hearing both the parties the Court Commissioner will determine the actual payment incurred for the maintainance of the estate. The amount which is so determined by the court Commissioner will be payable by both the petitioner and the respondent no.2. The respondent no.2 shall pay 50% of the said expenses as determined by the Court Receiver within a period of eight weeks from the receipt of the Court Commissioner’s order in that behalf.

All the chamber summons No. 1342 of 2003 and Notice of Motion No. 1198 of 2003. 3707 of 2003, 693 of 2004, 1185 of 2005, 1902 of 2005, 2411 of 2003 and Trust petition no. 1 of 2001 and Suit No. 44 of 1998 are disposed off.

sd/-

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